

111TH CONGRESS
1ST SESSION

H. R. 4053

To establish the Office of Childhood Overweight and Obesity Prevention and Treatment within the Office of Public Health and Science of the Department of Health and Human Services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 2009

Mr. MORAN of Virginia (for himself and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the Office of Childhood Overweight and Obesity Prevention and Treatment within the Office of Public Health and Science of the Department of Health and Human Services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Kids Act”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

1 (1) Over the past 3 decades, the rate of obesity
2 has more than doubled for children aged 2 to 11
3 years and more than tripled for adolescents aged 12
4 to 19 years according to the Centers for Disease
5 Control and Prevention.

6 (2) Current data from the Centers for Disease
7 Control and Prevention shows that 32 percent of
8 children are overweight, 16 percent are obese, and
9 11 percent are extremely obese.

10 (3) In low-income populations, some racial and
11 ethnic groups, and among recent immigrants, the
12 rates of obesity among children and youth are
13 alarmingly high.

14 (4) Overweight and obese children are at much
15 greater risk of developing diabetes, heart disease,
16 high blood pressure, asthma, and other diseases than
17 their non-obese peers, and many are subjected to
18 ridicule and bullying that damages their emotional
19 well-being.

20 (5) Overweight and obese children are at risk of
21 growing into adults who do not participate fully in
22 the workforce because of employment discrimination,
23 lost productivity due to illness and disability, and
24 premature death.

1 (6) In 2008, national health care expenditures
2 associated with adult overweight and obesity exceed-
3 ed \$100,000,000,000.

4 (7) Many factors contribute to the childhood
5 obesity epidemic, including eating patterns, family
6 dynamics, economic situations, levels of physical ac-
7 tivity, and the influence of media messages.

8 (8) Research shows that current food and bev-
9 erage marketing practices influence children and
10 youth to make choices that are not in keeping with
11 healthful diets, and agreement on effective voluntary
12 industry standards has not been reached.

13 (9) Family plays an important role in society
14 and is widely recognized as important in shaping
15 and establishing children's attitudes and behaviors
16 about nutrition.

17 (10) Family and consumer sciences education
18 programs can address nutrition, fitness, and positive
19 lifestyle choices as an integral part of the cur-
20 riculum. Positive health attitudes and habits are the
21 foundation for successful management of daily living
22 and therefore prepare young people to manage the
23 multiple roles of family member, wage earner, and
24 community leader.

1 (11) Existing State immunization and health
2 registries present a unique opportunity to create
3 State and national childhood body mass index sur-
4 veillance systems. Because all 50 States currently
5 maintain childhood immunization tracking systems,
6 using such systems to track childhood obesity data
7 is an effective, efficient basis for building a national
8 childhood obesity surveillance system.

9 (12) Health screenings under the Medicaid and
10 SCHIP programs are important tools for preventing
11 overweight and obesity, and follow-up counseling and
12 treatment must be available to children suffering
13 from or at risk for these conditions.

14 (13) Childhood obesity is a public health crisis
15 that will not be solved without the full support of the
16 Government.

17 (14) To address this crisis, it is necessary to co-
18 ordinate the budgets, policies, programs, and re-
19 search efforts of Federal agencies and to establish
20 effective interdepartmental collaboration and prior-
21 ities for action, paying particular attention to the
22 unique needs of diverse groups and high-risk popu-
23 lations.

1 **SEC. 3. FTC REVIEW OF ADVERTISING AND MARKETING OF**
2 **UNHEALTHY FOODS AND BEVERAGES.**

3 (a) DETERMINATION.—Not later than 3 years after
4 the issuance of guidelines by the Office of Childhood Over-
5 weight and Obesity Prevention and Treatment described
6 in section 1711(b)(7) of the Public Health Service Act,
7 the Federal Trade Commission shall—

8 (1) promulgate rules that define advertising,
9 promoting, and marketing directed at children and
10 youth including—

11 (A) the age of the intended audience; and

12 (B) the medium used to convey such ad-
13 vertising, promoting, or marketing; and

14 (2) promulgate rules under section 553 of title
15 5, United States Code, consistent with the guidelines
16 issued by the Office of Childhood Overweight and
17 Obesity Prevention and Treatment described in sec-
18 tion 1711(b)(7) of the Public Health Service Act,
19 specifying categories of foods and beverages for or
20 about which any advertisement, promotion, or mar-
21 keting directed at children and youth shall be an
22 abusive, unfair, or deceptive act or practice in or af-
23 fecting commerce.

24 (b) VIOLATION.—A violation of a rule promulgated
25 under subsection (a)(2) shall be treated as a violation of
26 a rule defining an unfair or deceptive act or practice pre-

1 scribed under section 18(a)(1)(B) of the Federal Trade
 2 Commission Act (15 U.S.C. 57a(a)(1)(B)). The Federal
 3 Trade Commission shall enforce this section in the same
 4 manner, by the same means, and with the same jurisdic-
 5 tion as though all applicable terms and provisions of the
 6 Federal Trade Commission Act were incorporated into and
 7 made a part of this section.

8 (c) REPEAL.—Section 18(h) of the Federal Trade
 9 Commission Act (15 U.S.C. 57a(h)) is repealed.

10 (d) CONFORMING AMENDMENTS.—Subsections (i)
 11 and (j) of section 18 of the Federal Trade Commission
 12 Act (15 U.S.C. 57a) are redesignated as subsections (h)
 13 and (i), respectively.

14 **SEC. 4. FCC LIMITS ON ADVERTISING UNHEALTHY FOODS**
 15 **AND BEVERAGES DURING CHILDREN’S PRO-**
 16 **GRAMMING.**

17 Section 102 of the Children’s Television Act of 1990
 18 (47 U.S.C. 303a) is amended—

19 (1) by redesignating subsection (d) as sub-
 20 section (e); and

21 (2) by inserting after subsection (c) the fol-
 22 lowing new subsection:

23 “(d) LIMITATION ON ADVERTISING FOODS AND BEV-
 24 ERAGES OF LOW NUTRITIONAL VALUE TO CHILDREN.—

1 “(1) IN GENERAL.—Not later than 30 days
2 after the issuance of guidelines by the Office of
3 Childhood Overweight and Obesity Prevention and
4 Treatment as required by section 1711(b)(7) of the
5 Public Health Service Act, the Commission shall ini-
6 tiate a proceeding to revise its regulations with re-
7 spect to commercial matter in children’s television
8 programming for the purpose of limiting the amount
9 of time devoted to advertising foods and beverages
10 of low nutritional value.

11 “(2) RULE CONTENTS.—In carrying out the
12 proceeding under paragraph (1), the Commission
13 shall, at a minimum—

14 “(A) prohibit the showing of any advertise-
15 ments during or adjacent to children’s television
16 programming for foods or beverages classified
17 as Tier 3 under guidelines issued under such
18 section;

19 “(B) limit the amount of time devoted to
20 advertisements during or adjacent to children’s
21 television programming for foods or beverages
22 classified as Tier 2 under such guidelines to 2
23 minutes per hour on weekends and 3 minutes
24 per hour on weekdays; and

1 “(C) apply such prohibitions and limita-
 2 tions to commercial television broadcast licens-
 3 ees and to direct broadcast satellite (DBS) pro-
 4 viders, as defined in section 25.701(a) of the
 5 Commission’s rules (47 CFR 25.701(a)).

6 “(3) DEADLINE.—The Commission shall take
 7 all actions necessary to complete the proceeding re-
 8 quired under paragraph (1) within 120 days after
 9 the initiation of such proceeding.”.

10 **SEC. 5. OFFICE OF CHILDHOOD OVERWEIGHT AND OBESITY**
 11 **PREVENTION AND TREATMENT.**

12 Title XVII of the Public Health Service Act (42
 13 U.S.C. 300u et seq.) is amended by adding at the end
 14 the following new section:

15 **“SEC. 1711. OFFICE OF CHILDHOOD OVERWEIGHT AND OBE-**
 16 **SITY PREVENTION AND TREATMENT.**

17 “(a) ESTABLISHMENT.—There is established within
 18 the Office of Public Health and Science of the Department
 19 of Health and Human Services an office to be known as
 20 the Office of Childhood Overweight and Obesity Preven-
 21 tion and Treatment (in this section referred to as the ‘Of-
 22 fice’), which shall be headed by a director appointed by
 23 the Secretary (in this section referred to as the ‘Director’).

24 “(b) DUTIES.—The Secretary, acting through the Di-
 25 rector, shall carry out the following:

1 “(1) Evaluate the policies, programs, and ac-
2 tions of each Federal agency to identify—

3 “(A) existing evidence-based policies, pro-
4 grams, and actions that are effective in pre-
5 venting childhood obesity; and

6 “(B) opportunities for each Federal agency
7 to develop new age- and developmentally-appro-
8 priate evidence-based policies, programs, and
9 actions to prevent childhood obesity.

10 “(2) Expand Federal data collection and sur-
11 veillance systems to monitor—

12 “(A) the prevalence of childhood obesity
13 and co-morbidities;

14 “(B) dietary behaviors, physical activity
15 levels, and sedentary behaviors of children and
16 youth; and

17 “(C) the effectiveness of existing public
18 and private sector policies, programs, and ac-
19 tions in preventing childhood obesity, including
20 local wellness policies under section 204 of the
21 Child Nutrition and WIC Reauthorization Act
22 of 2004 (42 U.S.C. 1751 note).

23 “(3) Implement Federal support measures, in-
24 cluding grants, to increase the capacity of State,
25 tribal, and territorial health departments to—

1 “(A) provide leadership and technical as-
2 sistance in preventing and treating childhood
3 obesity;

4 “(B) enhance surveillance efforts, including
5 support for the development of health registries,
6 immunization information systems, or other
7 child health information systems that may be
8 used to monitor local rates of childhood obesity
9 and co-morbidities; and

10 “(C) implement obesity prevention and
11 treatment programs and evaluate such pro-
12 grams to establish best practices.

13 “(4) Implement a coordinated, comprehensive,
14 long-term, and national multimedia public education
15 campaign focused on preventing childhood obesity
16 and evaluate the effectiveness of such public edu-
17 cation campaign.

18 “(5) Promote the adoption of and describe and
19 evaluate barriers to the implementation of Federal
20 standards and guidelines for age-appropriate nutri-
21 tion and wellness practices and physical activity pro-
22 grams for all students.

23 “(6) Evaluate the effectiveness of Federal agri-
24 cultural policies (including agricultural subsidies,
25 commodity programs, and programs to promote

1 farmers markets and community food projects in
2 areas with limited access to affordable and nutri-
3 tious food) at making a diet consistent with the Die-
4 tary Guidelines for Americans published jointly by
5 the Department of Health and Human Services and
6 the Department of Agriculture affordable and avail-
7 able to Americans at all economic levels.

8 “(7) Within 2 years after the date of the enact-
9 ment of this section, for purposes of encouraging
10 healthful eating patterns in children and adolescents
11 and improving children’s and adolescents’ under-
12 standing of their nutritional needs—

13 “(A) in consultation with the Secretary of
14 Agriculture, and with reference to recommenda-
15 tions by the Institute of Medicine of the Na-
16 tional Academies, identify the following cat-
17 egories of foods and beverages—

18 “(i) Tier 1 foods and beverages, which
19 are healthful for children and adolescents
20 and the consumption of which is encour-
21 aged;

22 “(ii) Tier 2 foods and beverages,
23 which do not exceed levels of total, satu-
24 rated, and trans fat, sugars, and sodium

1 that are acceptable in a healthful diet for
2 children and adolescents; and

3 “(iii) Tier 3 foods and beverages,
4 which do not contribute to a healthful diet
5 for children and adolescents and the con-
6 sumption of which is discouraged; and

7 “(B) in consultation with the Chairman of
8 the Federal Trade Commission and the Chair-
9 man of the Federal Communications Commis-
10 sion, for each category of foods and beverages
11 described in subparagraph (A), develop and
12 publish guidelines applicable to the marketing,
13 advertising, or promoting of such foods and
14 beverages to children and adolescents that sup-
15 port the purposes of this paragraph, taking into
16 account—

17 “(i) the emotional vulnerability of
18 children and adolescents and their cog-
19 nitive ability to distinguish between com-
20 mercial and non-commercial content; and

21 “(ii) society’s interest in protecting
22 the health and well-being of its children
23 and the long-term health and well-being of
24 its population.

1 “(8) In consultation with the National Insti-
2 tutes of Health, evaluate existing research and iden-
3 tify and initiate further research as necessary in pe-
4 diatric obesity prevention by examining—

5 “(A) factors involved in changing dietary
6 behaviors, physical activity levels, and sedentary
7 behaviors, including factors to motivate changes
8 in behavior;

9 “(B) factors that influence nutrition and
10 wellness practices across an individual’s life
11 span;

12 “(C) strategies to reinforce and sustain im-
13 proved behavior;

14 “(D) barriers to behavioral change;

15 “(E) specific ethnic and cultural influences
16 on behavioral change;

17 “(F) policy, environmental, social, clinical,
18 and behavioral interventions that focus on—

19 “(i) reducing and preventing an in-
20 crease in obesity prevalence;

21 “(ii) improving dietary behaviors;

22 “(iii) increasing the accessibility of
23 healthy, affordable foods in communities;

24 “(iv) increasing physical activity lev-
25 els, including an assessment of the impact

1 of changes to the built environment (the
2 man-made physical structures and infra-
3 structure of communities) on the levels of
4 physical activity in communities and popu-
5 lations; and

6 “(v) reducing sedentary behaviors;

7 “(G) the feasibility, efficacy, effectiveness,
8 and sustainability of intervention approaches;

9 “(H) the ways in which the marketing of
10 foods, beverages, and sedentary entertainment
11 influence the attitudes and behaviors of children
12 and youth;

13 “(I) whether taxation and pricing strate-
14 gies can be used to promote improved dietary
15 behaviors, more physical activity, or reduced
16 sedentary behaviors; and

17 “(J) the effect of exposure to endocrine-
18 disrupting chemicals, including exposure in
19 utero, on the initiation or exacerbation of obe-
20 sity.

21 “(9) Make available to local educational agen-
22 cies, school food authorities, and State educational
23 agencies information and technical assistance for use
24 as described in section 204 of the Child Nutrition
25 and WIC Reauthorization Act of 2004 (42 U.S.C.

1 1751 note), as amended by section 6 of the Healthy
2 Kids Act.

3 “(10) Subject to the availability of appropria-
4 tions provided for such purpose, establish and carry
5 out the grant program under subsection (c).

6 “(c) GRANT PROGRAM.—

7 “(1) IN GENERAL.—The Secretary, acting
8 through the Director, may establish and carry out a
9 matching grant program to make grants to eligible
10 entities to—

11 “(A) assist the Office—

12 “(i) in gathering data regarding child-
13 hood obesity; and

14 “(ii) in implementing a coordinated,
15 comprehensive, long-term, and national
16 multimedia public education campaign fo-
17 cused on preventing childhood obesity; and

18 “(iii) in evaluating the effectiveness of
19 such public education campaign; and

20 “(B) carry out demonstration programs to
21 reduce the incidence of childhood obesity.

22 “(2) ELIGIBLE ENTITIES.—For purposes of this
23 subsection, an ‘eligible entity’ means a—

24 “(A) State;

25 “(B) unit of general local government;

1 “(C) nonprofit organization with dem-
2 onstrated experience and focus in childhood
3 obesity issues, as determined by the Director;

4 “(D) a partnership between any combina-
5 tion of subparagraphs (A) through (C).

6 “(3) MATCHING REQUIREMENT.—An eligible
7 entity that receives a grant under this subsection
8 shall provide, from non-Federal sources, an amount
9 equal to 25 percent of such grant award to carry out
10 the activities under this subsection. Such non-Fed-
11 eral share may be provided in the form of in-kind
12 contributions of services or materials.

13 “(4) REPORTS.—

14 “(A) REPORTS TO THE DIRECTOR.—Not
15 later than 1 year after receipt of funds from a
16 grant awarded under this subsection, and for
17 each fiscal year an entity receives such funding
18 thereafter, such entity shall submit to the Di-
19 rector a report on its use of grant funds re-
20 ceived and such other information as the Direc-
21 tor may require.

22 “(B) REPORTS TO CONGRESS.—Not later
23 than 2 years after the first disbursement of
24 funds for a grant awarded under this sub-
25 section, and annually thereafter, the Secretary,

1 acting through the Director, shall submit to
2 Congress a report on the status of the grant
3 program under this subsection.

4 “(5) LIMITATION ON FUNDS.—Of the amounts
5 provided through a grant under this subsection, an
6 eligible entity may use not more than 10 percent for
7 administrative expenses.

8 “(6) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated to carry out
10 the grant program under this subsection
11 \$15,000,000 for each of fiscal years 2011 to 2015.

12 “(d) EXISTING PROGRAMS.—The Secretary, acting
13 through the Director, shall carry out the duties under sub-
14 section (b) in a manner that enhances existing programs
15 that the Secretary determines are effective.

16 “(e) CONSULTATION.—In order to carry out the du-
17 ties of the Office, the Secretary, acting through the Direc-
18 tor, shall consult with—

19 “(1) experts from the public sector, including—

20 “(A) the Director of the Centers for Dis-
21 ease Control and Prevention;

22 “(B) the Secretary of Agriculture;

23 “(C) the Secretary of Education;

24 “(D) the Secretary of Defense;

25 “(E) the Secretary of Interior;

1 “(F) the Secretary of Transportation;

2 “(G) the Secretary of Housing and Urban
3 Development;

4 “(H) the Chairman of the Federal Com-
5 munications Commission; and

6 “(I) the Chairman of the Federal Trade
7 Commission; and

8 “(2) experts from the private sector, including
9 experts in pediatrics, public health, psychology, nu-
10 trition, sports medicine, or related fields, such as
11 family and consumer services education.

12 “(f) ANNUAL REPORT.—Not later than one year
13 after the date of the enactment of this section, and annu-
14 ally thereafter, the Secretary, acting through the Director,
15 shall submit to Congress a report on the activities of the
16 Office carried out under this section and any findings,
17 conclusions, and recommendations based on such activi-
18 ties.

19 “(g) CONSIDERATIONS.—In carrying out this section,
20 the Secretary, acting through the Director, shall consider
21 the unique needs of racially and ethnically diverse groups
22 and high-risk populations, including low-income popu-
23 lations and communities.”.

1 **SEC. 6. LOCAL WELLNESS POLICY.**

2 Subsection (b) of section 204 of the Child Nutrition
3 and WIC Reauthorization Act of 2004 (42 U.S.C. 1751
4 note) is amended—

5 (1) in paragraph (1), by inserting “and the Of-
6 fice of Childhood Overweight and Obesity Prevention
7 and Treatment” after “the Centers for Disease Con-
8 trol and Prevention”; and

9 (2) in paragraph (2)—

10 (A) by redesignating subparagraphs (B),
11 (C), and (D) as subparagraphs (C), (D), and
12 (E), respectively; and

13 (B) by adding after subparagraph (A) the
14 following new subparagraph:

15 “(B) support schools and local educational
16 agencies in—

17 “(i) communicating with parents on
18 how nutrition, wellness, and physical activ-
19 ity affect the health of their child;

20 “(ii) implementing nutrition, wellness
21 practices, and physical activity guidelines;

22 “(iii) integrating nutrition and
23 wellness, family and consumer sciences
24 education programs, and physical activity
25 into the overall curriculum;

“(iv) offering professional development for faculty and staff that includes information on nutrition and wellness and physical activity issues;

“(v) improving the quality of physical education curricula and increasing the training of physical education teachers; and

“(vi) encouraging healthy eating and reducing school dependence on profits from the sale of foods with minimal nutritional value;”.

SEC. 7. REGULATIONS.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) in subsection (a), by striking “, including regulations” and all that follows through “School Lunch Act”; and

(2) in subsection (b)—

(A) by striking “The regulations” and all that follows through “if” and inserting “The Secretary shall prescribe regulations relating to the service of foods and beverages in participating schools and service institutions in competition with the programs authorized under

1 this Act and the Richard B. Russell National
2 School Lunch Act (42 U.S.C. 1751 et seq.).
3 Such regulations shall require that”; and

4 (B) by striking the period at the end and
5 inserting the following: “and shall, based on the
6 categories identified pursuant to section
7 1711(b)(7)(A) of the Public Health Service
8 Act—

9 “(1) identify Tier 1 foods and beverages, which
10 are healthful for children and the consumption of
11 which is encouraged, and provide that such foods
12 and beverages may be offered throughout the school
13 day at all school levels;

14 “(2) identify Tier 2 foods and beverages, which
15 do not exceed an acceptable level of total, saturated,
16 and trans fat, sugars, and sodium, and provide that
17 such foods and beverages may be made available
18 only at limited times of the day at specified school
19 levels; and

20 “(3) identify Tier 3 foods and beverages, which
21 do not contribute to a healthful diet for children and
22 adolescents, and provide that such foods and bev-
23 erages may not be made available during the school
24 day or at after-school activities for students, except
25 that the local wellness policy required by section 204

1 of the Child Nutrition and WIC Reauthorization Act
2 of 2004 (42 U.S.C. 1751 note) may allow such foods
3 and beverages to be offered at occasional events au-
4 thorized by the school, such as celebrations, special
5 fundraising events, and after school activities.”.

6 **SEC. 8. EARLY AND PERIODIC SCREENING, DIAGNOSTIC,**
7 **AND TREATMENT SERVICES.**

8 (a) IN GENERAL.—Section 1905(r) of the Social Se-
9 curity Act (42 U.S.C. 1396d) is amended—

10 (1) by redesignating paragraph (5) as para-
11 graph (6); and

12 (2) by adding after paragraph (4) the following
13 new paragraph:

14 “(5) Obesity prevention, nutritional counseling,
15 and other services for obesity—

16 “(A) which are provided—

17 “(i) at intervals which meet reason-
18 able standards of medical practice, as de-
19 termined by the State after consultation
20 with recognized medical organizations in-
21 volved in child health care; and

22 “(ii) at such other intervals indicated
23 as medically necessary; and

24 “(B) which shall at a minimum include nu-
25 tritional counseling and treatment for obesity.”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendment made by subsection
4 (a)(2) shall apply to medical assistance furnished on
5 or after January 1, 2010.

6 (2) EXCEPTION FOR STATE LEGISLATION.—In
7 the case of a State plan under title XIX of the So-
8 cial Security Act, which the Secretary of Health and
9 Human Services determines requires State legisla-
10 tion in order for the plan to meet the additional re-
11 quirement imposed by the amendment made by sub-
12 section (a)(2), the State plan shall not be regarded
13 as failing to comply with the requirement of such
14 title solely on the basis of its failure to meet such
15 additional requirement before the first day of the
16 first calendar quarter beginning after the close of
17 the first regular session of the State legislature that
18 begins after the date of enactment of this Act. For
19 purposes of the previous sentence, in the case of a
20 State that has a 2-year legislative session, each year
21 of the session shall be considered to be a separate
22 regular session of the State legislature.

23 **SEC. 9. REQUIRING COVERAGE OF EPSDT SERVICES UNDER**
24 **SCHIP.**

25 (a) ADDITIONAL REQUIRED SERVICES.—

1 (1) REQUIRED COVERAGE OF EPSDT SERV-
2 ICES.—Section 2103(c) of the Social Security Act
3 (42 U.S.C. 1397cc(c)) is amended—

4 (A) by redesignating paragraphs (7) and
5 (8) as paragraphs (8) and (9), respectively; and

6 (B) by inserting after paragraph (6), the
7 following:

8 “(7) EPSDT OBESITY TREATMENT SERV-
9 ICES.—The child health assistance provided to a tar-
10 geted low-income child shall include coverage of
11 early and periodic screening, diagnostic, and treat-
12 ment services described in section 1905(r)(5) and
13 provided in accordance with section 1902(a)(43).”.

14 (2) CONFORMING AMENDMENT.—Section
15 2103(a) (42 U.S.C. 1397cc(a)) is amended, in the
16 matter preceding paragraph (1), by striking “para-
17 graphs (5), (6), and (7)” and inserting “paragraphs
18 (5), (6), (7), and (8)”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendment made by subsection
22 (a)(1)(B) shall apply to child health assistance fur-
23 nished on or after January 1, 2010.

24 (2) EXCEPTION FOR STATE LEGISLATION.—In
25 the case of a State child health plan under title XXI

1 of the Social Security Act, which the Secretary of
2 Health and Human Services determines requires
3 State legislation in order for the plan to meet the
4 additional requirement imposed by the amendment
5 made by subsection (a)(1)(B), the State child health
6 plan shall not be regarded as failing to comply with
7 the requirements of such title solely on the basis of
8 its failure to meet such additional requirement be-
9 fore the first day of the first calendar quarter begin-
10 ning after the close of the first regular session of the
11 State legislature that begins after the date of enact-
12 ment of this Act. For purposes of the previous sen-
13 tence, in the case of a State that has a 2-year legis-
14 lative session, each year of the session shall be con-
15 sidered to be a separate regular session of the State
16 legislature.

17 **SEC. 10. AUTHORIZATION AND AVAILABILITY OF APPRO-**
18 **PRIATIONS.**

19 (a) **AUTHORIZATION.**—There are authorized to be ap-
20 propriated such sums as may be necessary to carry out
21 this Act.

22 (b) **AVAILABILITY.**—Amounts appropriated pursuant
23 to paragraph (1) shall remain available until expended.

○